

June 28, 2019

**Ex Parte**

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

Re: *Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. &sect; 160(c) to Accelerate Investment in Broadband and Next-Generation Networks*, WC Docket No. 18-141; *Business Data Services in an Internet Protocol Environment*, WC Docket No. 16-143, *Technology Transitions*, GN Docket No. 13-5, *Special Access for Price Cap Local Exchange Carriers*, WC Docket No. 05-25, *AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, RM-10593

Dear Ms. Dortch:

On June 26, 2019, Karen Reidy, Vice President, Regulatory Affairs of INCOMPAS, and I, on behalf of INCOMPAS, spoke with Terri Natoli, Associate Bureau Chief, Wireline Competition Bureau, and Ed Krachmer, Assistant Division Chief, Competition Policy Division, Wireline Competition Bureau, regarding the above-referenced proceedings. On June 27, 2019, Ms. Reidy separately met with Travis Litman, Chief of Staff to Commissioner Rosenworcel; Arielle Roth, Legal Advisor to Commissioner O’Rielly, and Christopher McGillen, Intern; Jamie Susskind, Chief of Staff to Commissioner Carr; Randy Clarke, Acting Legal Advisor to Commissioner Starks; and Ms. Natoli. In addition, Ms. Reidy and I met with Nirali Patel, Legal Advisor to the Chairman. We addressed the following issues with respect to the draft Order currently scheduled for consideration at the Commission’s July 10, 2019 Open Meeting.

We raised a concern with respect to what fiber was evaluated to determine that competitive fiber exists within a half mile of an incumbent LEC wirecenter. Because the fiber network data was from 2013, some competitive LECs have since consolidated with incumbent LECs in the same regions. Notable examples are Level 3/CenturyLink and XO/Verizon. The ReadMe file accompanying the April Data Tables does not make clear how such fiber was categorized in compiling the April Data Tables. The Commission should make clear that as the Wireline Competition Bureau finalizes the list of wirecenters with competitive fiber within a half mile, that it excludes fiber now owned by an incumbent LEC’s CLEC affiliate within the incumbent LEC’s region.<sup>1</sup>

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<sup>1</sup> The ability of INCOMPAS and others to evaluate the actual impact of, and comment on, the proposed forbearance has been hindered because the list of potentially affected wirecenters has not been released. This includes the inability to comment on any specific concerns or indications of abnormalities in the results of the test.

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We also explained that Paragraph 61 and n. 200 of the draft Order appear to make clear that the Commission is not intending, during the three-year transition, to upset pre-existing interconnection agreements or other contractual arrangements. Accordingly the Commission should clarify that where contracts permit moves or substitutions, or other changes, of circuits (commonly termed “MAC” or “Moves, Adds or Changes”), those agreements or contracts continue to permit those changes during the three-year transition with respect to existing customers at the end of the initial six month “freeze.”

Finally, we noted that a three-year transition may be too rapid for small competitive LECs serving more remote areas. These remote areas are likely to have low teledensity, and to require transport over longer distances. Thus, the evolution of actual and potential competition in these areas can reasonably be expected to be slower. To address this, we suggested that an additional three years of transition be added for areas that are not “urban” as defined in 47 C.F.R. 54.505(b)(3)(i). The same factors that make these non-urban areas higher cost to serve are likely to lead to slower evolution of transport competition. This would be readily implementable because USAC already maintains the data necessary to identify non-urban locations.

Please contact me if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'John T. Nakahata', written in a cursive style.

John T. Nakahata

*Counsel to INCOMPAS*